



Public Service Commission
State of North Dakota

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September 11, 2014

VIA E-FILING

236657

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111

ENTERED
Office of Proceedings
September 11, 2014
Part of
Public Record

Re: Docket No. EP 724, United States Rail Service Issues

Dear Ms. Brown:

I sincerely appreciate the opportunity to participate in the September 4, 2014 field hearing in Fargo, North Dakota. I ask that the Board fully consider and act favorably upon the specific requests set forth in my hearing testimony last week. This letter supports and supplements my testimony and the points I raised at that hearing.

At the September 4th hearing, I discussed the Commission’s ongoing efforts to obtain reasonable and necessary service performance data and the railroads outright refusal to provide responsive information. Obtaining such additional information was a theme echoed by many witnesses.

We continue to be surprised and disappointed with the railroads continuing refusals to provide responses to our informational requests. Please find enclosed for the record copies of the Commission’s correspondence with the railroads on this subject. (Attachment A). The railroads have rebuffed our modest requests, claiming that the act of seeking information is “completely preempted” and is “precisely the kind of burdensome and inconsistent state regulatory efforts that the ICCTA was designed to preempt.” See CP’s Aug. 28, 2014 letter at 1; BNSF’s May 28, 2014 letter at 3. There is no reasonable basis for the railroads’ position.¹ To the contrary, far from burdening

¹ See, e.g., *Joint Petition for Declaratory Order – Boston & Maine Corp. and Town of Ayer, MA*, 5 S.T.B. 500, 511 (2001) (requesting railroads to appear, meet government entities, and submit responsive information for an appropriate period of time are not preempted because “cooperation on the part of railroads is necessary to reach reasonable solutions to state and local concerns that do not unreasonably interfere with interstate commerce”).

commerce or unreasonably interfering with railroad operations, these straightforward requests are designed to promote a better understanding among railroads, shippers, and the public on recurring service failures, to assist in the monitoring of railroad performance, and ultimately, to help facilitate and enhance commerce and service to the public.

The railroads also insist that reporting of additional geographic-specific, corridor-specific, and commodity-specific data is too burdensome, and that our Commission's requests are premised on the "mistaken view" that the railroads may be "skewing [their] allocation of resources and service toward shipment of non-agricultural commodities." Such assertions are wholly-off base.² Additionally, contrary to the railroads' assertions, the Commission has no "view" on how the railroads have allocated their resources, in part because we lack the data to properly assess the issue of service allocation. On this topic, the railroads cite "many news articles noting that service problems have been experienced by all categories of rail traffic" (BNSF Aug. 27, 2104 letter at 1). That blanket assertion does little to address the issue. Moreover, if the railroads are correct that they are reasonably allocating service, additional public reporting will simply confirm this fact, and clear up any misinformation.

Please be assured that the Commission has no interest in second guessing railroad management. It sincerely appreciates the carriers' announced infrastructure, equipment, and manpower investments in our State in order to help put the ongoing service situation "back on track." However, data transparency, not blanket assertions without the benefit of factual support, is to the benefit of all concerned. There is too much at stake here with the need for the provision of reliable and timely operation of railroad transportation for the STB to continue to leave it up to the rail industry to largely self-regulate and self-report on service performance.

As many witnesses testified, the STB needs to take a more proactive role, immediately. In this respect, the Commission appreciates the recent additional service data that has been requested of the railroads by the Board. However, more detailed reporting is necessary because the data being reported today is not a reliable indicator of service performance, as the Board heard loud and clear at last week's field hearing.

Additional reporting should include the following:

² I understand that the Board in similar situations has ordered much more detailed periodic reports (with the consent of the involved railroad), including: (a) specific information on the placement of empty grain cars in each of an eleven-state grain producing area; (b) specific shipment times for commodities (including grain shipments) from specified origin-destination pairs; (c) detailed terminal switching information; (d) specific information on daily crew starts, train starts, and the number of trains held each day at major terminals for crews, power, or congestion; and (e) specific cycle time information for individual commodities on major traffic corridors. See *STB Service Order No. 1518, Joint Petition for Service Order*, 2 S.T.B. 725, 733 (1997). The Board has described such additional, periodic reporting as "reasonable and necessary." *Id.*

- 1) Require the railroads to continue weekly reporting as required pursuant to the Board's June 20, 2014 and August 18, 2014 orders, along with its recent "fall peak" letters to the railroads;
- 2) Expand the reporting requirement to include the average travel time, delays, changes to crew and locomotive availability, and the average difference between the projected car delivery dates and the actual delivery date. The reports should include separate reports on grain, coal, oil/petroleum products, and ethanol. Grain shipments should be reported in shuttle train and less than shuttle train service, and as appropriate to determine railroad performance at non-shuttle elevators. Because North Dakota has been "ground zero" for service performance problems over the last year, reports should be made for North Dakota separately, along with any other states that have been experiencing similar service problems.
- 3) Require the railroads to utilize and report reasonable historical data going back at least three to five years so that a true baseline for service is established and so that patterns and shifts between industry sectors can be observed; and
- 4) Require the railroads to report real-time and accurate information to shippers as to service disruptions, the status of their orders, and delays. In addition, the STB should consider requiring additional periodic public reporting on current maintenance activities and plans, along with any service delays and failures on major rail corridors. Such additional reporting will help enable the public to be kept apprised of corridor- and route-specific disruptions and congestion that could impact their rail system service.
- 5) The STB should also consider requiring railroads to provide more detailed short and long-term planning and service performance reporting. This could include forecasted and actual demand for principal commodities and actual service performance in relation to projections and actual service requests; planned and completed capital investment and maintenance programs to meet expected demand; capital investment and maintenance programs that still need to be performed, but that have not yet been undertaken (or have only been partially undertaken); planned and actual actions undertaken to minimize service disruptions on key corridors as the result of capital investment and maintenance programs; the allocation of human, operating, and capital resources within and across traffic groups and operating budgets that might affect service; expected changes in

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operations or traffic group volumes that might affect service; and related subjects.

Some of the above obviously goes beyond the Commission's prior service data requests. However, the severity of the situation requires more pro-active, immediate attention, especially as the fall harvest season begins to reach full peak. Again the Board should err on the side of transparency, especially given all of the misinformation and conflicting information that appears to have been circulated as to the nature of the service problems, when service problems will be fixed, and whether any such fixes will ensure long-term service reliability for our shipper constituents. The involved railroads are multi-billion dollar enterprises whose service failures have inflicted hundreds of millions of dollars of economic harm on farmers and individual businesses in North Dakota and the neighboring regions. The additional reporting being sought is not overly intrusive, and especially under the present circumstances, is absolutely reasonable and necessary.

Thank you for your consideration and your continuing active attention to this important matter.

Sincerely,



Randy Christmann
Commissioner

Enclosures

Attachment A



Public Service Commission

State of North Dakota

COMMISSIONERS

Brian P. Kalk
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Executive Secretary
Darrell Nitschke

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May 16, 2014

Brian Sweeney
Regional Administrative Vice President
BNSF Railway Company
325 Cedar St. Ste. 620
St. Paul, MN 55101

Herb Jones
Director State and Local Government Affairs
Canadian Pacific Railroad
Battle Creek Building
1010 Shop Road
St. Paul, MN 55106

Re: Information request on rail service issues

Dear Mr. Sweeney and Mr. Jones:

Thank you for your participation in the discussion of rail service in North Dakota held on April 28, 2014 at the North Dakota Public Service Commission. The information exchanged was very helpful.

Under North Dakota Century Code Chapter 49-10.1, the Public Service Commission has authority to regulate railroads "to ensure that all rates, facilities, and services are just and reasonable, and are not unduly discriminatory, unduly or unreasonably prejudicial, nor unduly or unreasonably preferential." N.D.C.C. Section 49-10.1-02. As part of our responsibility over rail service in North Dakota, we are requesting the additional information listed below:

1. Monthly car totals for farm products and for crude oil and related products, originating in North Dakota since January 1, 2009 (include cars originating on short lines).
2. Records of the time between release of cars for pickup and when the cars are transported, for the categories of shippers in item #1, since January 1, 2009.
3. Data indicating travel time between origin and destination, for the categories of shippers in item #1, since January 1, 2009.
4. Beginning immediately, a weekly update on total North Dakota agricultural past due cars and average days late.

The Commission plans to review the information you provide to determine whether to open a formal investigation.

Brian Sweeny, BNSF
Herb Jones, CPR
May 16, 2014
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Please send your responses to Darrell Nitschke, Executive Secretary, no later than May 30, 2014.
If you have any questions, please contact Mr. Nitschke at dnitschk@nd.gov or (701) 328-4098.

Once again, thank you for your time and we look forward to hearing more from you.

Sincerely,



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



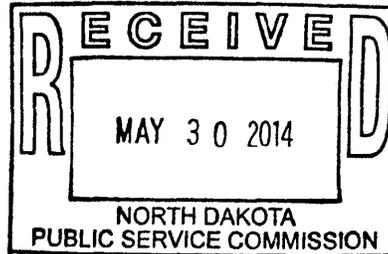
Julie Fedorchak
Commissioner



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May 28, 2014

Darrell Nitschke
Executive Secretary
Public Service Commission
600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480

Dear Mr. Nitschke:

I am writing on behalf of BNSF in response to the North Dakota Public Service Commission's May 6, 2014 letter requesting certain volume and service information from BNSF Railway and CP Rail. BNSF appreciates the Commission's concerns regarding the backlog of grain traffic and, as we explained at our April 28 meeting, has been taking many steps, both in the long and short-term, to address the situation.

The information requests in the Commission's letter are directed at issues that are the subject of a proceeding before the Surface Transportation Board in STB Docket No. EP 724, *United States Rail Service Issues*. The Commission's letter cites North Dakota Century Code Chapter 49-10.1 for the proposition that the Commission has the authority to regulate railroads like BNSF. As the Commission's own website acknowledges, the Commission's authority diminished with passage, first, of the federal Staggers Rail Act of 1980 and, second, the ICC Termination Act of 1995 (ICCTA). The ICCTA eliminated all remaining state regulation of railroads in this country, and transferred to the federal Surface Transportation Board (STB) the sole authority to engage in rail regulation. Congress was very clear about this. Under Section 10501(b) of the ICCTA, the STB's regulatory jurisdiction over rail transportation is "exclusive," and its regulatory processes "preempt" any other remedies provided under "Federal or State law." 49 U.S.C. § 10501(b).

The STB held an extensive hearing on April 10, 2014, in Washington, DC, about those service issues, and North Dakota agricultural interests were well-represented. Prior to the hearing, BNSF engaged in an extensive communication campaign with our customers, and we remain committed to continued transparency as we work towards consistently meeting our customers' service expectations. BNSF presented substantial data at that hearing concerning its key service metrics, which it has been providing to the STB on a bi-weekly basis since February. After the hearing, in STB Docket No. EP 724 (Sub-No. 1), the STB required BNSF and Canadian Pacific to provide more detail, on a weekly basis, concerning the railroads' plans for ensuring the timely delivery of fertilizer shipments in multiple states, including North Dakota. BNSF has done so every week since the middle of April. Its reports, including the metrics for North Dakota, are available on the STB's website, www.stb.dot.gov as well as on BNSF's own Service Overview webpage: <http://www.bnsf.com/customers/service-page/index.html>.

As reflected in the information we are sharing with our customers and in our reporting to the STB, BNSF is moving significant volumes across our network despite service issues that continue to impact velocity on parts of our system. In four of the last five weeks, BNSF has moved more than 200,000 units, often exceeding volumes moving over that period in 2013. In terms of the volumes of agricultural products being routed over our network, our last 5 weeks, as reported to AAR, have been the highest volumes of agricultural products moved since the fall of 2013. We have now met and exceeded our Six-Week Fertilizer Campaign goal of 52-trainloads, transporting 57 trainloads as of May 24, 2014. We have also committed to our customers that we will reduce the number of past-due orders and move this year's crop prior to the fall harvest, and we are putting increased resources up against that goal. We will be moving grain hoppers that have been in shuttle service for grains and are expiring on contract into the non-shuttle network to directly impact past due orders in the next couple of weeks.

As you may know, BNSF handled more than half of all the increased volume growth on the U.S. rail system in 2013. More than 20 percent of the total growth in the industry originated or terminated in North Dakota, including agricultural products, oil, sand, autos and other commodities critical to North Dakota's and the nation's economy. In response to that demand, BNSF continues to make progress against the capital investment, locomotive acquisition and hiring targets that we have set in order to meet the volume, velocity and reliability needs of our customer base. A significant portion of that investment, including key capital expansion projects, is focused on the growth we have seen in North Dakota. We are starting to see benefits from that investment and deployment of resources as we obtain greater network fluidity and velocity, enabling us to continue to move the significant volumes I outlined above. Our progress against those investment goals is reflected in the communications we regularly provide our customers and in our reporting to the STB.

Some of the witnesses at the STB's April 10 hearing requested that the STB require BNSF and other railroads to provide other kinds of geographic-specific, corridor-specific, and commodity-specific data in addition to that which BNSF is already providing. In some instances, this included historical data as well as current data; and some of the requests appear to have been motivated, like some of the Commission's requests, by the mistaken view that BNSF is skewing its allocation of resources and service toward shipment of non-agricultural commodities. BNSF responded to these requests in a letter to the STB dated April 28, 2014, which is available on the STB's website and which is also attached to this letter for your convenience (see particularly pages 3-4). We explained there that having to provide such data tailored to different parties' interests would be counterproductive and disruptive of BNSF's efforts to improve its service, including to agricultural shippers.

With the exception of fertilizer shipments, the STB has not required that additional, more granular traffic data is required from BNSF, and the STB has also not required that historical data be generated. We understand that the Commission has a genuine interest in rail service in North Dakota, just as the public service commissions of other states and various shipper associations have an interest in rail service as it affects their geographic areas and commodities important to them. But requests for the kind of detailed state-specific historical data set forth in the

Commission's information requests represent precisely the kind of burdensome and inconsistent state regulatory efforts that the ICCTA was designed to preempt.

Please be assured that we continue our communications on service with our individual customers and also provide regular updates on service developments. As mentioned above, BNSF is currently providing the STB with biweekly reporting on key service metrics and progress against our goals for bringing significant investments online to support velocity improvements. Several of those metrics are focused on our Northern region and North Dakota. I have attached a copy of the most recent report that was submitted on May 21 and we would be happy to provide the Commission with a copy of future submissions. In addition, we encourage the Commission to review the regular advisories and reports we provide our customers about service and investments on the Service Overview page of our website site which I referenced above.

BNSF knows that we must continue focused efforts to drive improvement in the areas of our franchise where velocity and reliability lag. We are committed to continuing to marshal our resources to providing the level of service our customers and the public expect. Please feel free to contact me if you have questions about the attached report or additional useful information that may be available or wish to discuss any of these matters further. I would also be glad to help facilitate a meeting with BNSF's new Agricultural Group Vice President John Miller in the near future.

Sincerely yours,

A handwritten signature in cursive script that reads "Brian J. Sweeney". The signature is written in black ink and is positioned above the printed name.

Brian J. Sweeney

Cc: Commissioner Randy Christmann
Commissioner Brian P. Kalk
Commissioner Julie Fedorchak



Stevan B. Bobb
Executive Vice President and
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April 28, 2014

The Honorable Daniel Elliott, Chairman
The Honorable Ann Begeman, Vice Chairman
United States Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

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Office of Proceedings
April 28, 2014
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Re: STB Ex Parte No. 724, United States Rail Service Issues

Dear Members of the Board:

This letter supplements the testimony my colleague Bob Lease and I provided at the Board's April 10, 2014 public hearing in the proceeding referenced above. We appreciated the additional opportunity to discuss the service difficulties we have experienced on our network and the root causes of significant, concentrated volume increases and severe winter weather; to engage with our customers and the Board on concerns around our service levels; and provide additional insights into our plans for restoring consistent and reliable service to our customers. Over the course of the day, we heard that our extensive efforts to be open, transparent, and forthright with all of our customers have been successful and well-received by them. However, the message that we have fallen short on executing from a service perspective was also very clear. As I said at the hearing, BNSF is fully committed to marshalling our resources to improving our network velocity and providing the level of service our customers expect.

Our testimony outlined for the Board the contributing circumstances, the short-term and long-term actions necessary to reach service performance levels acceptable to our customers, and our current progress towards recovery by corridor. The Board has made the presentation we provided to Commissioner and staff at the hearing publicly available on its website. The hearing presentation included an appendix that contained the updated view of the key service metrics that we have been providing to the Board on a bi-weekly basis since our meeting on February 18, 2014. We also have posted a copy of our hearing presentation and appendix on our website at www.bnsf.com under the Customer tab. We are posting updates to the metrics contained in the appendix on our website, along with our other service advisories for our shipping community.

I would also like to take this opportunity to highlight several items raised in testimony or discussion at the hearing or in follow-on comments that have subsequently been filed which I believe merit an additional response from BNSF.



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Fertilizer Delivery Efforts

As we explained in our April 16th response to the Board's April 15th order in STB Ex Parte Docket No. 724 (Sub-No.1), BNSF has implemented a number of measures under our Six-Week Fertilizer Campaign that are designed to deliver a significant volume of fertilizer into the marketplace during the critical planting window, including running fertilizer trainloads with dedicated power in the same manner as our highly efficient grain shuttles. We expect to move 52 trainloads of fertilizer over a six-week period in BNSF-direct unit train service to critical agricultural destinations that we serve. We implemented this plan on April 12th and, since then, have been able to make significant progress against our goal, which is reflected in the initial report we are submitting today in the Board's sub-docket on fertilizer deliveries. We will be providing weekly updates of the metrics contained in that response, which we will also make available on our website.

Emergency Service Orders/Access to Alternative Carriers

At the April 10th hearing, a handful of trade associations and shippers asked that the Board issue emergency service orders or other service directives to maximize recovery efforts on behalf of certain shipper groups. In addition, Vice Chairman Begeman referenced the potential need for the Board to consider directed service remedies in the event of further significant service degradation, though she also commented that such measures were not currently warranted and that the Board was mindful of unintended consequences flowing from such intervention. We are extremely concerned that any agency service directive would seriously undercut the significant efforts being made to return network velocity and, overall, worsen service for the large majority of BNSF's customers. The Board has previously acknowledged that such orders are an extraordinary remedy which should only be used sparingly and where circumstances clearly warrant. Current circumstances do not warrant this extreme step of redirecting the ongoing massive efforts to restore service levels across our network.

BNSF is in the best position to consider the operational and investment steps necessary to increase network velocity for all our customers. We have detailed those plans in our ongoing submissions to the Board and our communications with our customers, and we are doggedly pursuing them. Were the Board to take the extreme step of directing specialized recovery



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measures to the benefit of a particular commodity group or geographic locale, that step would certainly come at the expense of our other customers and overall network velocity. We note that one particular group, the National Grain and Feed Association (NGFA), recognized the potential for directed service to exacerbate service issues and slow recovery, and asked in its testimony that the Board refrain from micromanaging the railroads' substantial recovery efforts.

We believe that even more severe impacts would likely result from the introduction of alternative carrier access on areas of our network that are currently stressed. Our strong belief is that introduction of a second carrier into congested terminals or line segments would not be helpful to fluidity, and could also significantly degrade our already stressed network's performance. We assure you that we will continue to address each individual customer's service circumstances in a manner that maximizes capacity across our whole network to the benefit of our entire customer base.

Additional Reporting

Several witnesses at the hearing asked that the Board require more specialized reporting of traffic and other data. Specifically, NGFA urged the Board to require increased reporting of service metric information on a granular corridor-specific and commodity-specific basis. While we understand why customers may have made these requests, requiring BNSF to account for our efforts at the level of individual commodities or specific geographic sub-levels publicly on a regular basis would be counterproductive to BNSF's efforts to address the flow issues affecting our network as a whole. BNSF has been and remains committed to transparency about our service recovery with the Board, our customers, and all of our stakeholders, including NGFA and its members. We do not believe that requiring BNSF and other railroads to report additional service metric information that is particularly tailored to satisfy the interests of any trade association's membership will help any of BNSF's shippers receive improved service any faster. Such mandated additional reporting requirements would have the potential to skew service recovery towards the favored shippers (e.g., grain and feed shippers under the NGFA proposal) at the expense of shippers of other commodities, which would not be appropriate.

It is also worth noting that requests for additional service metric reporting requirements like NGFA's appear rooted in the mistaken view that BNSF is skewing its allocation of resources and

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service towards shipments of non-agricultural commodities that, according to NGFA, provide BNSF higher compensation than agricultural shipments. As one example, NGFA requests that BNSF report average dwell times, train sets, and miles-per-day transited each for grain, coal, and crude shipments for a period beginning *January 2012* through the present. First, as I stated at the hearing, crude and other energy shipments are not being given preference over other commodities moving on BNSF; as we discussed at the hearing, the reality is that crude volumes have seen a velocity reduction as well. We manage our traffic flows to maximize velocity across our entire network. Regardless of commodity, if a customer is experiencing a severe service issue, we escalate the situation and focus resources to avoid a facility or plant having to temporarily halt operations. This process is the same for all shippers and for all commodities including grain, crude or coal. Second, BNSF has been providing biweekly reports on a number of key service and investment metrics, and those metrics provide meaningful information on our recovery efforts and the impact of those efforts on our network. We will continue to provide that data to the Board and to our customers on our website. Providing numerous additional cuts of data back to periods that predate the current service issues by *years* is counterproductive and distracting from the real business of recovery.

Role of Forecasting in Asset Planning

As we discussed at the hearing, it is essential that BNSF continually look to the future and make investments in our network to accommodate our customers' growth. The last four years are our largest capital programs ever; 2014 is a record year for BNSF, with an investment of over \$5 billion. We have processes for short- and long-term planning that are built on volume forecasts which are continually adjusted throughout the year. Those forecasts are based on information we receive from our customers about their expected future volumes, and are dependent on the accuracy of that information. Because of our ability over the years to meet surge capacity, we have seen a trend among many of our customers of relying on the railroad to flex to handle higher volume demand during the course of the year. We experienced a related phenomenon in our agricultural sector where car and shuttle loading capacity went unclaimed in the first eight months of 2013 as agricultural shippers elected to not make transportation capacity commitments until late in the year. In some cases, shippers under-declare volumes in order to preserve their flexibility under their contracts, which tie their obligations to the volumes they declare at the beginning of the year.

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All of these customers count on the railroad being able to stretch capacity and resources to be able to deliver these stepped-up volumes throughout the year. In recent years, we have been able to fully accommodate that stepped-up volume. In 2013, we actually moved nearly 10.1 million units, an increase of 4.5% compared to 2012. This includes annual volume records for both our carload and domestic intermodal segments. In addition, BNSF accounted for over 50% of the U.S. rail industry's volume growth in 2013, and 100% of the growth among the railroads operating in the Western U.S. Also, in the first quarter of 2014 we achieved record volume levels again in our carload and domestic intermodal segments. Nonetheless, we were not able to meet the significantly higher concentrated demand we were experiencing across several key business sectors as we moved into the third quarter of 2013 – for all the reasons we described at the hearing – which had very real impacts on our customers.

BNSF is as motivated as anyone to ensure that we take all the steps within our control to avoid the circumstances contributing to our current service issues. One important element is obtaining meaningful forecast information on anticipated volume, and that requires the cooperation of our customers. In his testimony, NCTA President Tom Cantor recommended reviewing the Coal Forecasting Tool used by the railroads and shippers to identify volumes to be moved during the calendar year. We agree that such a review should be undertaken, with a particular focus on incorporating more forward-looking information than the current “next 30 days” approach permits. We are also looking at ways to better coordinate with our shippers of other commodities to obtain better information about volumes and flows.

In addition to providing meaningful forecast input enabling the railroad to direct investments to support growth, shippers and other transportation receivers have a role in ensuring that their own planning, including infrastructure investment in their facilities, will support their expected volumes. I would like to address a specific situation that was brought to the Board's attention at the hearing. One specific BNSF customer, Normerica, testified that BNSF's network service issues were causing it to incur significant demurrage bills. In reality, we have been in ongoing discussions with Normerica for several years about the root cause of demurrage charges at their Glendale, Arizona facility – namely, Normerica's failure to increase its rail receiving capacity at Glendale and a reliance on just-in-time delivery. We do not believe that our network performance in the last two quarters is significantly impacting the level of demurrage that Normerica is experiencing on BNSF shipments. In fact, Normerica's demurrage bill for the Glendale facility was lower in 2013 than it was in either of the prior two years. The real issue



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is that, at nearly any given time, there are more cars destined to the Glendale facility than the facility's three-car unloading track can accommodate. As a result of Normerica's failure to adequately plan and invest in its own facility, BNSF regularly ends up having to use critical yard capacity to hold Normerica's excess cars, which has a ripple effect for our network and other shippers. We have encouraged Normerica to expand their rail receiving capacity to match their volume needs for a number of years now, and will continue to have that dialogue with them.

Amtrak

In his testimony before the Board, Amtrak's Vice President of Operations made several comments that, simply put, do not reflect the reality of Amtrak's relationship with BNSF and our cooperative operating practices. First, Mr. Stadler described what he viewed as a causal link between the D.C. Circuit's ruling that certain aspects of the Passenger Rail Investment and Improvement Act of 2008 were unconstitutional and a decrease in Amtrak's service performance. However, with respect to BNSF, the facts do not support such a claim. Outside of service problems BNSF has had on our northern Transcon and affecting Chicago, Amtrak service running on BNSF's network has not experienced any meaningful degradation in on-time performance. If BNSF had suddenly changed its long-standing cooperative relationship with Amtrak in response to the D.C. Circuit ruling, one would expect to see service declines across our network rather than isolated to the northern Transcon and Chicago impacted services.

Second, Mr. Stadler stated that he did not believe that the railroads were meeting their statutory obligation to prioritize Amtrak shipments in the places where they move across freight networks. While on time performance is not equivalent to dispatching priority, looking at such data can be useful. However, to be meaningful the data must reflect delays that are caused by matters within the control of the host freight railroad, which our operating agreement with Amtrak does. Looking at on time percentages for all causes of delay does not provide any meaningful gauge of the host railroad's performance. When looking at delays that are within the control of BNSF, Amtrak performance on our network outside of the northern Transcon and Chicago impacted services has remained very strong.



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Conclusion

As we testified at the hearing, BNSF remains fully committed to restoring our network's service velocity as rapidly as possible; other than safety, at our railroad we have no higher priority. We are committed to providing our customers with real, meaningful, and transparent information as well. Most importantly, we understand that BNSF is a network – a network with thousands of customers. Our efforts are focused on restoring our network's overall velocity and expanding its capacity – steps which will benefit all of those customers. However, we are opposed to taking steps on our own, or that may be ordered by any regulatory agency, that would have the effect of further congesting our overall network by imposing short-term service solutions on the few shippers who have asked for you to take such an extraordinary step. Steps such as this will have the quite predictable effect of worsening network performance overall and lengthening the time it will take to restore our service to meet our customers' expectations.

Sincerely,

A handwritten signature in black ink, appearing to read "Stevan B. Bobb". The signature is written in a cursive, flowing style.

Stevan B. Bobb
Executive Vice President and Chief Marketing Officer



Carl R. Ice
*President and
Chief Executive Officer*

BNSF Railway Company
P.O. Box 961052
Fort Worth, TX 76161-0052

2650 Lou Menk Drive
Fort Worth, TX 76131-2830
(817) 352-1400
(817) 352-7488 fax
carl.ice@bnsf.com

May 21, 2014

The Honorable Daniel Elliott, Chairman
The Honorable Ann Begeman, Vice Chairman
The Honorable Debra Miller, Commissioner
United States Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423

Dear Members of the Board:

I write to provide you with our bi-weekly update on BNSF's network performance and the status of our hiring, capital and service goals. This letter follows our May 7, 2014, update and reflects performance through May 16.

Overall Service Performance:

BNSF continues to make progress against the capital investment, locomotive acquisition and hiring targets that we have set in order to meet the volume, velocity and reliability needs of our customer base. We have seen benefits from that investment and deployment of resources as we maintain gains in network fluidity and velocity that are reflected in our weekly volumes. BNSF moved more than 201,000 total units in the first full week of May and another 200,703 units last week, which means that BNSF volumes have been 200,000 or higher for four straight weeks. These weekly volume figures also exceed the amounts moved during the same periods in calendar year 2013. While we are pleased to see significant and consistent volumes move across our network, we know that we must continue focused efforts to drive improvement in the areas of our franchise where velocity and reliability continues to lag.

Review of Service Metrics:

Attached please find the updated metrics through last week. As you can see, terminal dwell continues to perform well against the benchmark in all three of our operating regions, and train speeds in the three operating regions are holding close to the levels from the prior bi-weekly report. These trends are also reflected in the overall terminal dwell and train speed numbers for the BNSF network.

While we have not achieved the goal for the second quarter of 2014 that we set earlier this year, we have maintained our improvements against the February baseline on coal deliveries and intermodal system transit days since the last bi-weekly report. We continue to see an upward trend in the number of agricultural units moving across our network, and our agricultural product units for the week ending May 17 is approximately 25% higher

BNSF Railway Company
May 21, 2014
Page -2-

than the amount moved during the same week of 2013. We have also been able to transport a significant amount of fertilizer and expect to exceed our 52-trainload commitment shortly. However, while we continue to move substantial volumes of agricultural commodities on our network, we have seen an increase of 285 past-due cars since our May 7 report and an increase as well in our average days late on such cars. Reducing the number and days late of past-due orders and moving this year's crop prior to the fall harvest remains a primary focus.

Conclusion

We will continue to update the Board with these measures on a bi-weekly basis, provide our weekly fertilizer update and participate in weekly calls with STB staff, as a supplement to our ongoing communications campaign with our customers as we move towards more consistent service.

Sincerely,



Carl R. Ice
President & CEO

Attachments

BNSF Railway Network Velocity & Service

STB Status Update: May 16, 2014

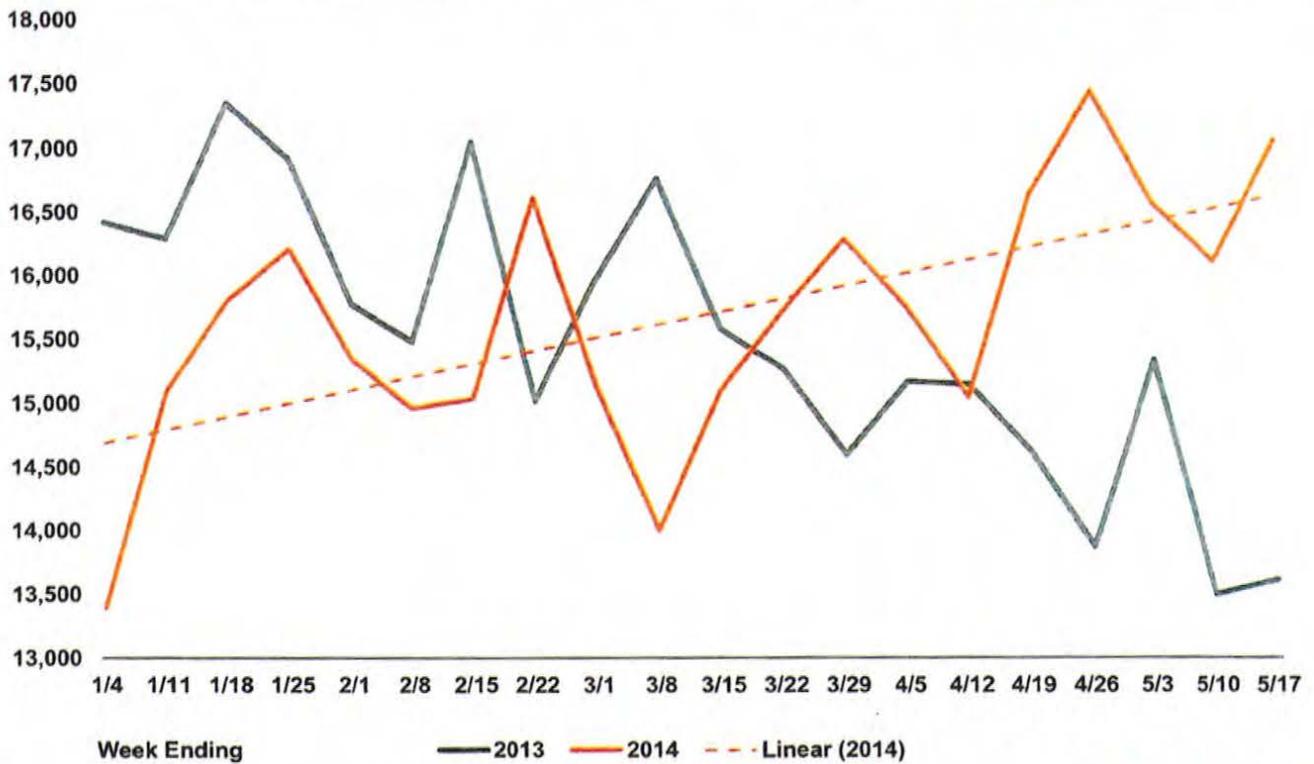
STB Status Update: May 16, 2014



BNSF Dashboard Service Metrics

	Goal 5/16	Baseline 2/7	Actuals 5/16	Change from Goal
Past Due Cars				
# of Cars	10,507	9,982	16,131	↑ 53.5%
Avg Days Late	20.0	15.6	28.2	↑ 41.0%
	Goal Q2 2014	Baseline 2/1-2/7	Actuals QTD 5/16	Change from Baseline
Coal Avg Monthly Tons (in millions)	23.7	19.2	22.1	↑ 15.1%
IM System Transit Days	4.00	5.32	4.65	↓ 12.6%
AAR Terminal Dwell Hours	28.0	34.6	29.3	↓ 15.3%
AAR Train Speed	N/A	21.8	21.4	↓ 1.8%

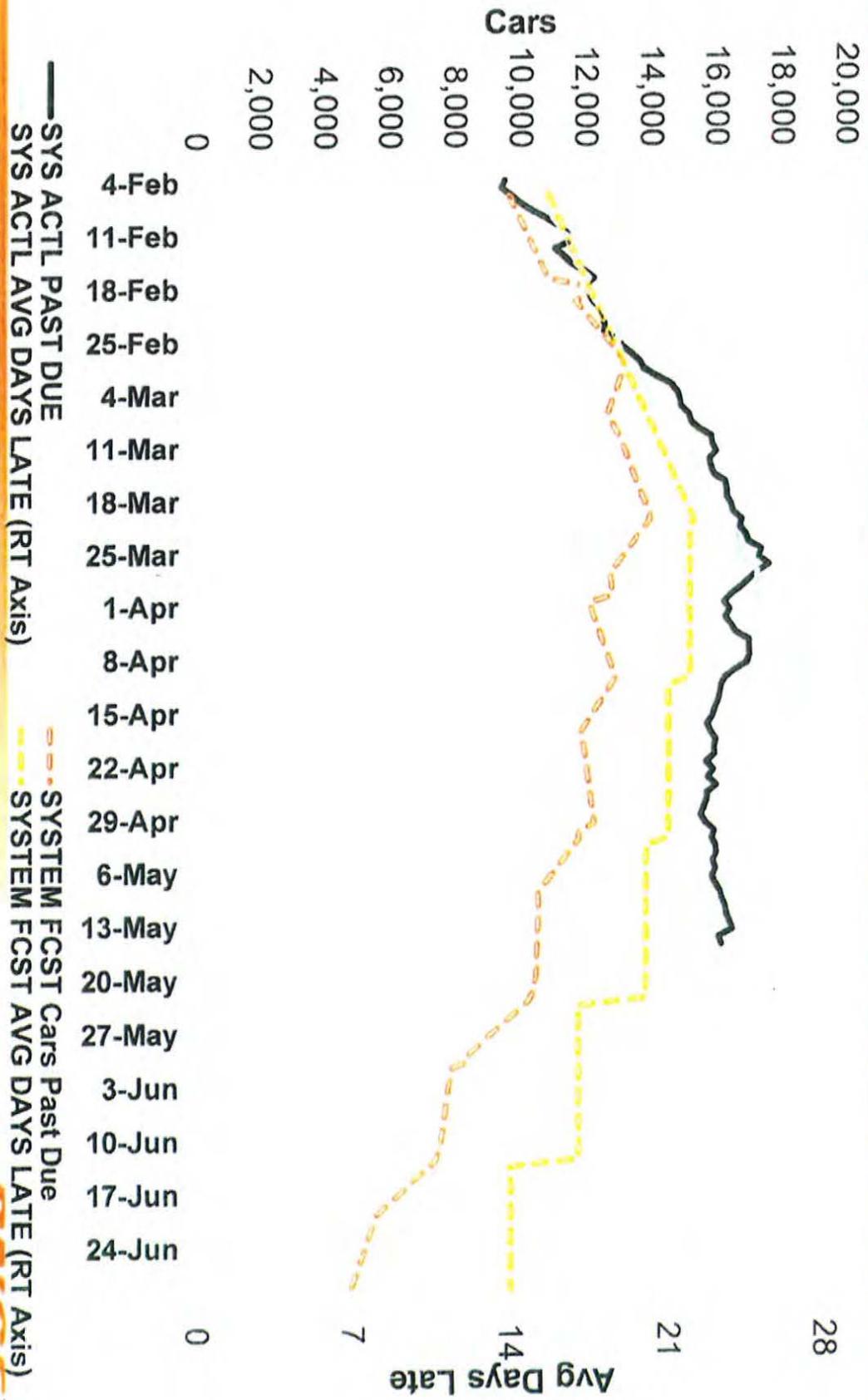
Ag Products Weekly Units 2014 vs 2013



Data Source: AAR Units (excludes Fertilizer & Ethanol, includes Food Products)



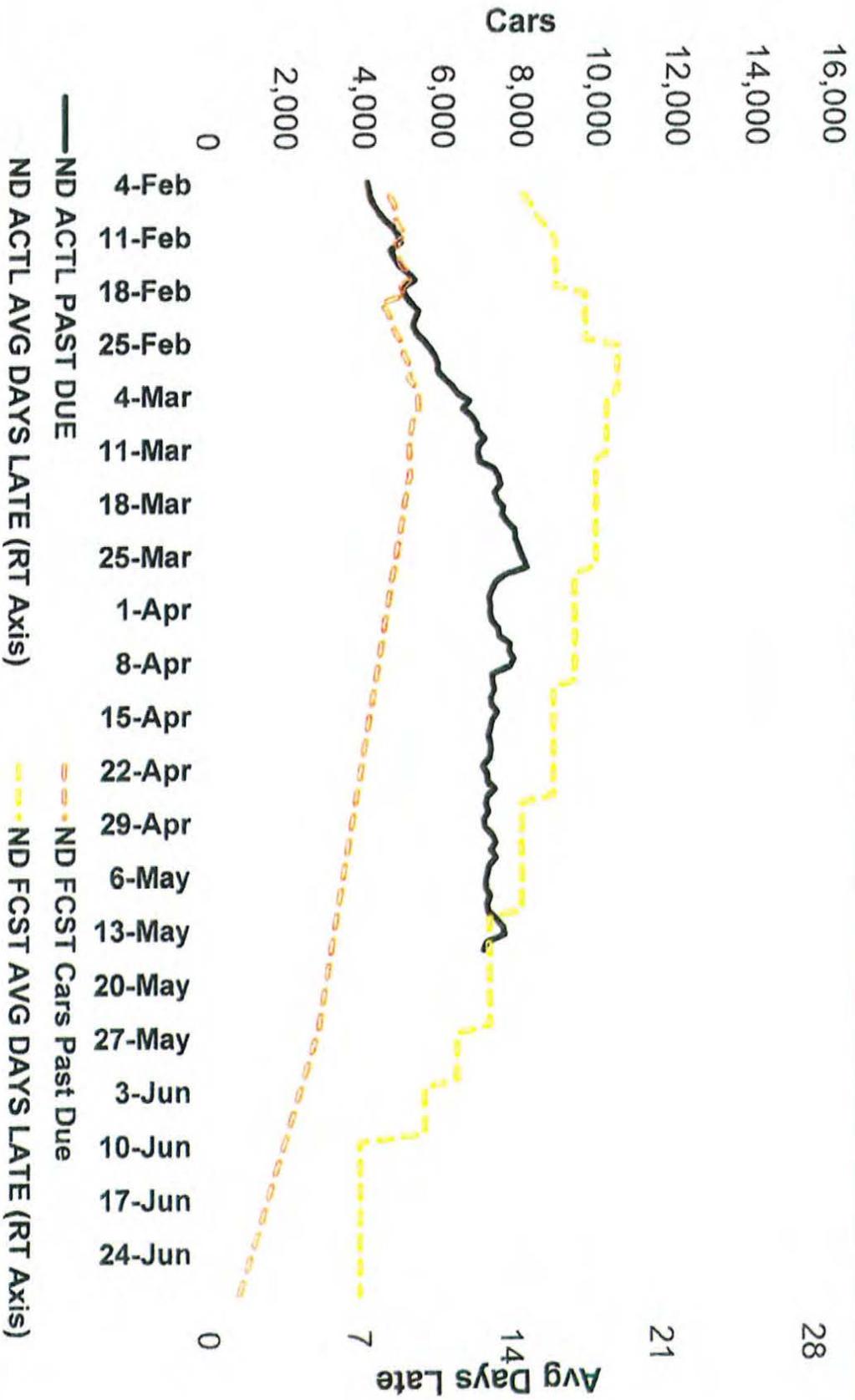
System Ag Past Due Cars



Data through May 16, 2014



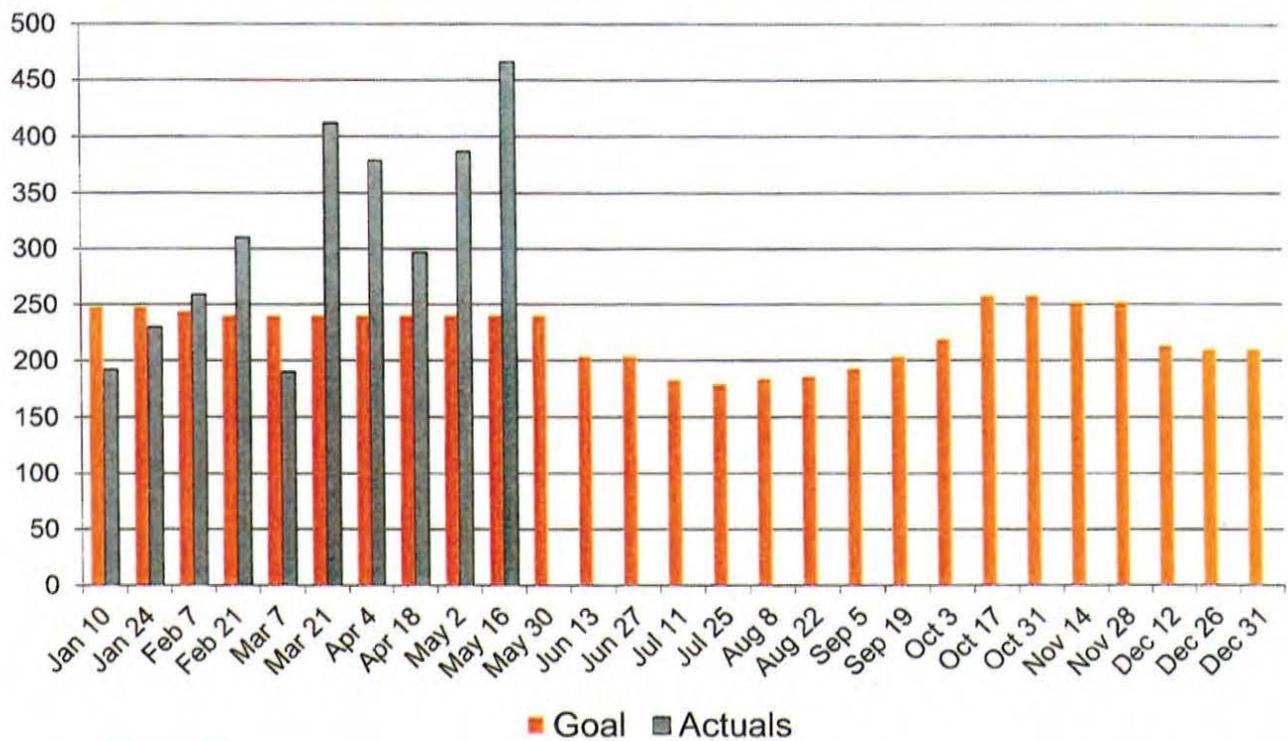
North Dakota Ag Past Due Cars



Data through May 16, 2014

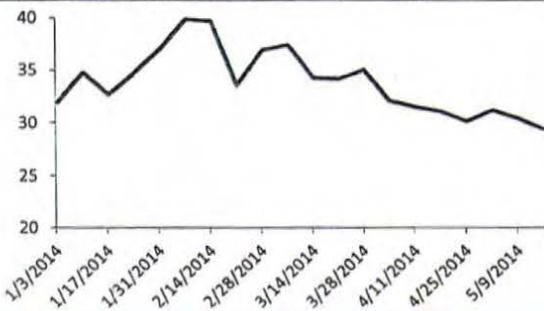


Sugar Cars Spotted - North Dakota



North Region

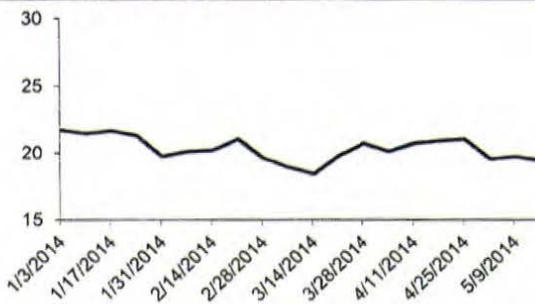
North Region AAR Dwell



AAR Dwell

Baseline 2/1-2/7	Actuals QTD 5/16	Change from Baseline
39.8	30.7	↓ 22.9%

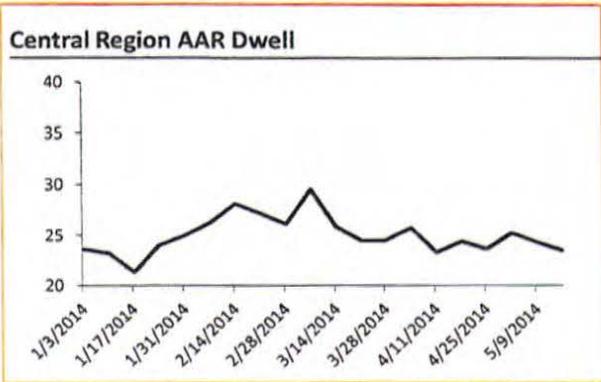
North Region AAR Train Speed



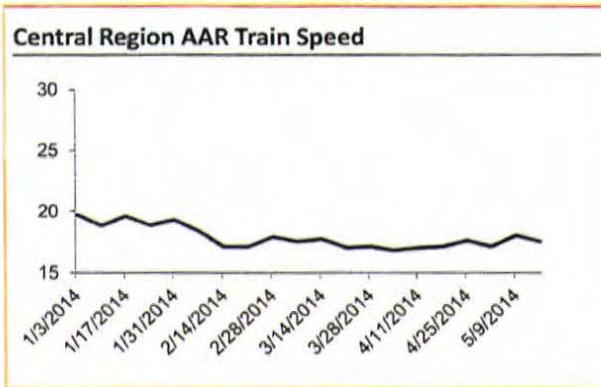
AAR Train Speed

Baseline 2/1-2/7	Actuals QTD 5/16	Change from Baseline
20.1	20.2	↑ 0.5%

Central Region



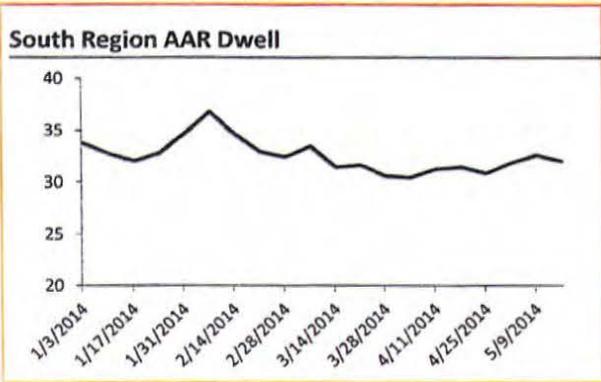
	Baseline 2/1-2/7	Actuals QTD 5/16	Change from Baseline
AAR Dwell	26.2	24.1	↓ 8.0%



	Baseline 2/1-2/7	Actuals QTD 5/16	Change from Baseline
AAR Train Speed	18.3	17.3	↓ 5.5%

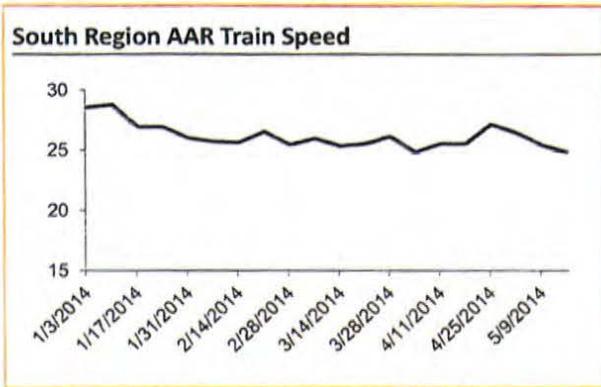


South Region



AAR Dwell

Baseline 2/1-2/7	Actuals QTD 5/16	Change from Baseline
36.8	31.5	↓ 14.4%



AAR Train Speed

Baseline 2/1-2/7	Actuals QTD 5/16	Change from Baseline
25.7	25.6	↓ 0.4%



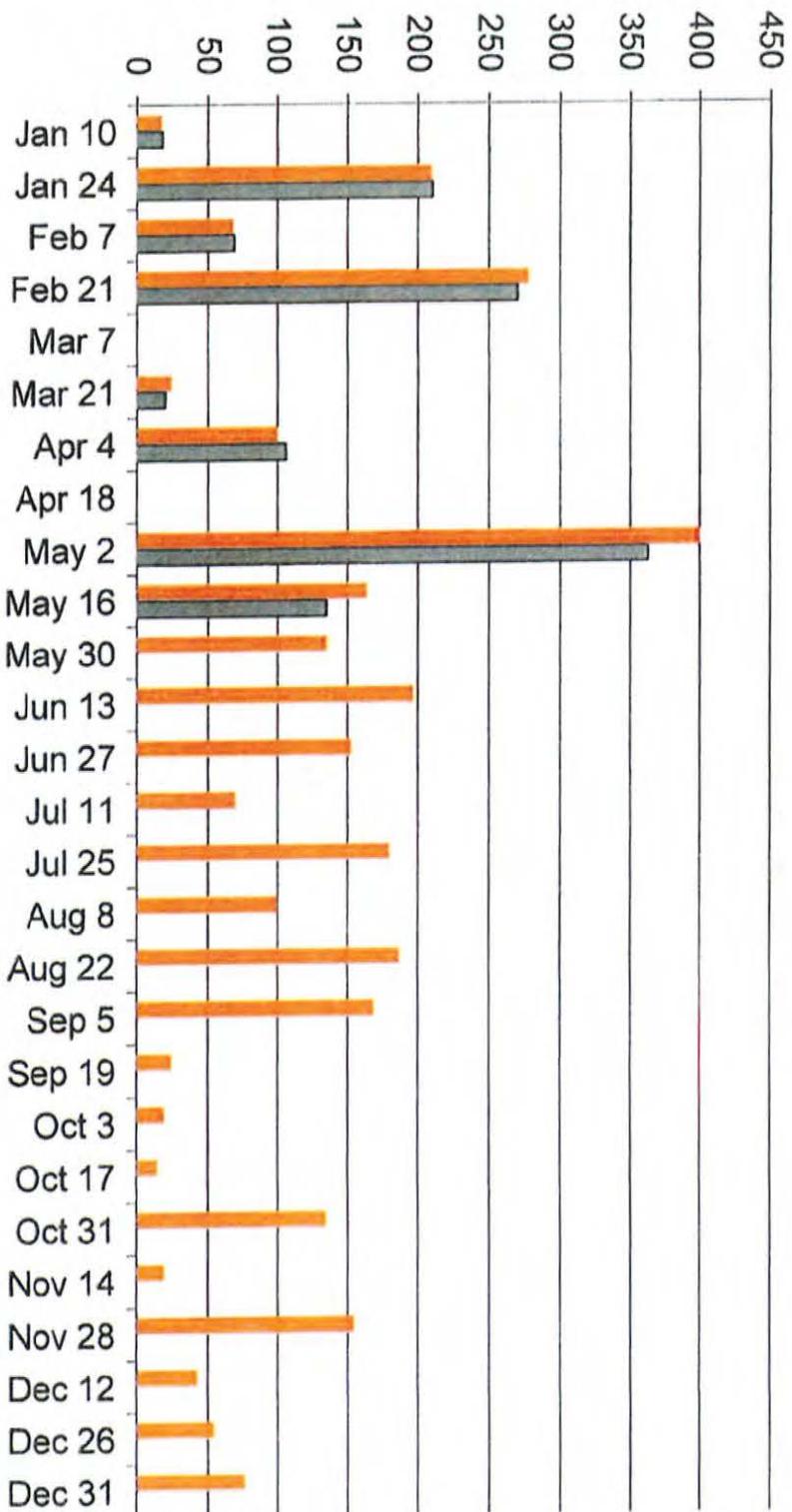
BNSF Long-Term Actions to Add Capacity

\$ Millions	Annual Goal	YTD Q2 Goal	Prior Period (YTD 5/2)	Current Period (YTD 5/16)
People Hiring				
TY&E	3,000	1,750	1,056	1,191
Eng & Mech	2,000	1,500	1,098	1,418
Locomotive Acquisitions	500	237	150	169
Car – Acquisitions, Replacements & Extensions	5,000	1,750	306	705
Expansion Capital	\$ 900	\$ 360	\$ 182*	\$ 182*
Replacement & Maint Capital	\$ 2,300	\$ 1,090	\$ 682*	\$ 682*

* YTD 5/2 and YTD 5/16 represents YTD through April 2014.



System TYE Employees Hired & Trained

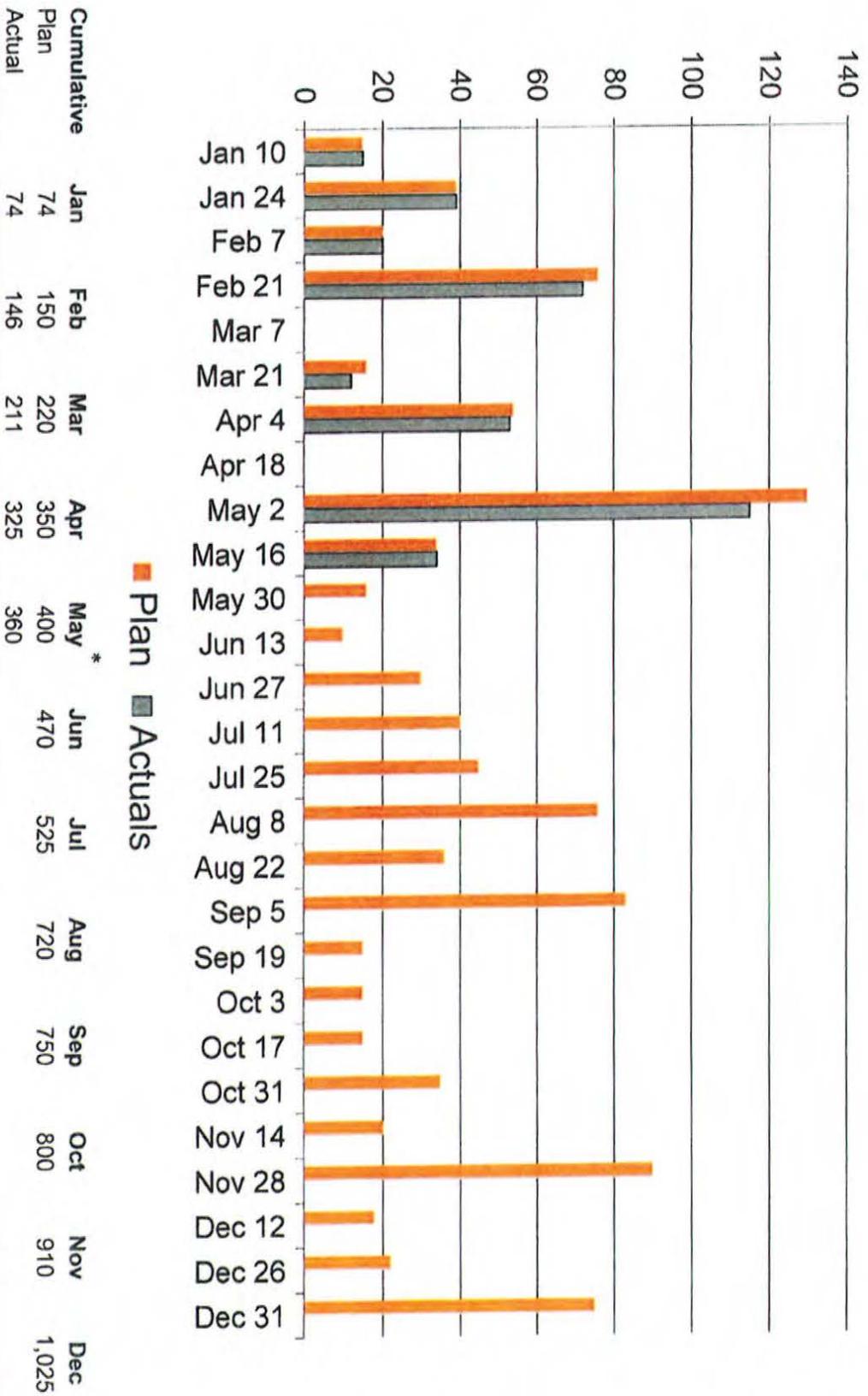


Cumulative	Jan	Feb	Mar	Apr	May *	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Plan	297	575	650	1,100	1,400	1,750	2,000	2,450	2,500	2,650	2,825	3,000
Actual	297	567	692	1,055	1,191							

* Actual is YTD through 5/16/14, plan is YTD through 5/31/14.



North TYE Employees Hired & Trained



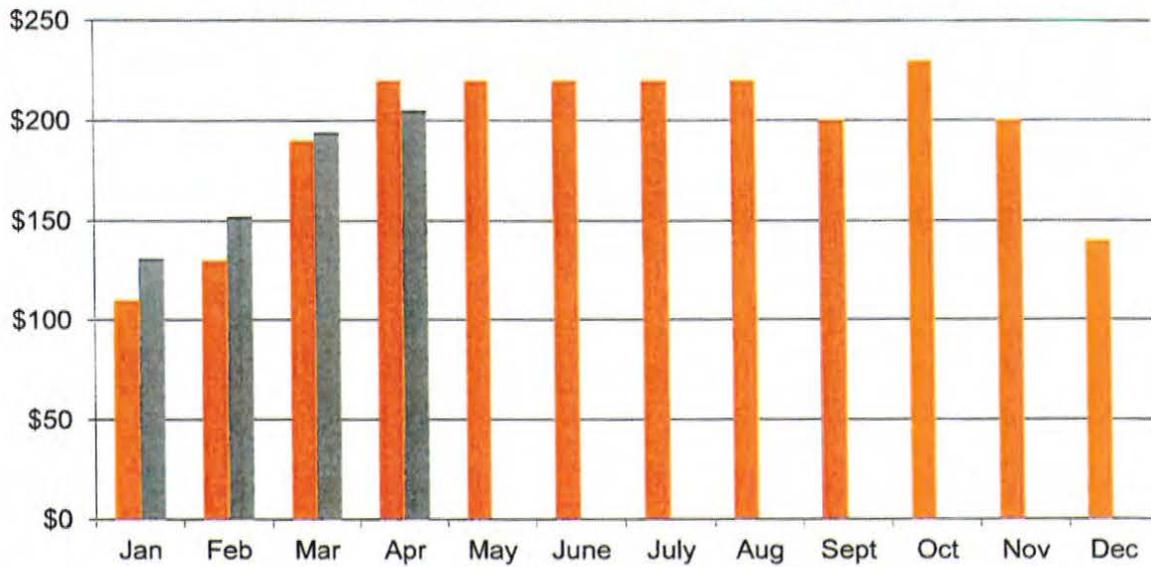
* Actual is YTD through 5/16/14, plan is YTD through 5/31/14.



System Capacity and Reliability

\$ Millions

Replacement & Maintenance Capital



■ Plan ■ Actuals

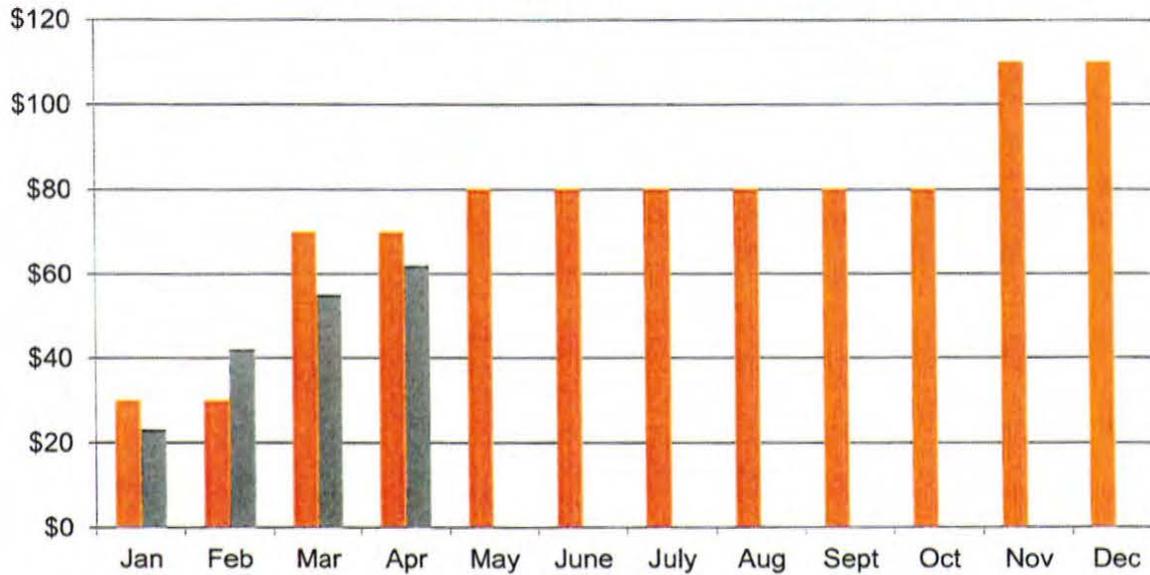
Cumulative	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Plan	\$110	\$240	\$430	\$650	\$870	\$1,090	\$1,310	\$1,530	\$1,730	\$1,960	\$2,160	\$2,300
Actual	\$131	\$283	\$477	\$682								



System Capacity and Reliability

\$ Millions

Expansion & Efficiency Capital



■ Plan ■ Actuals

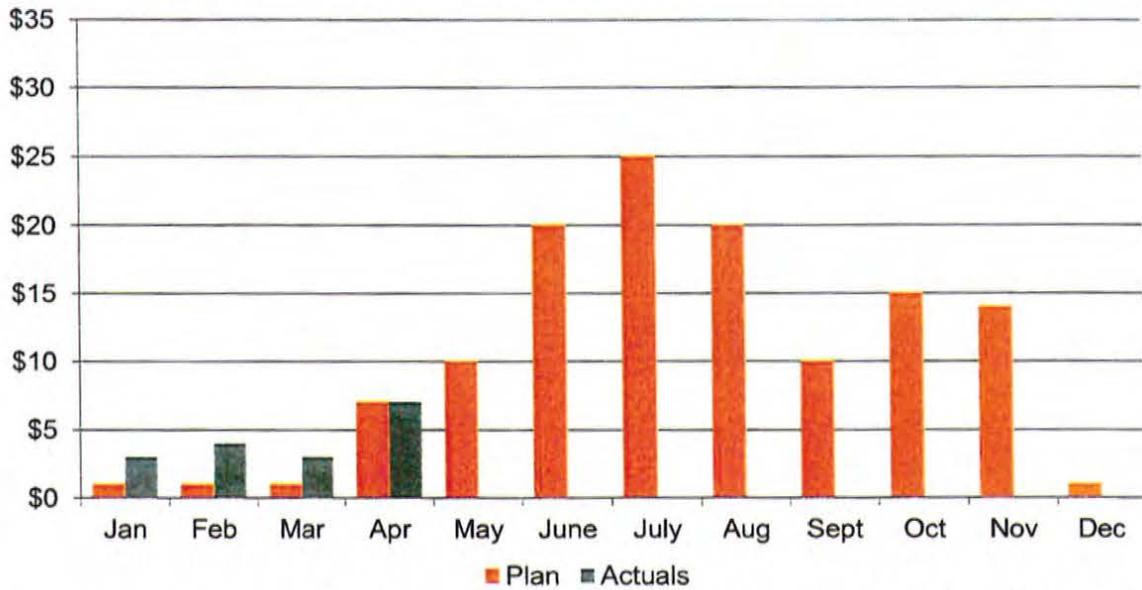
Cumulative	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Plan	\$30	\$60	\$130	\$200	\$280	\$360	\$440	\$520	\$600	\$680	\$790	\$900
Actual	\$23	\$65	\$120	\$182								



North Dakota Capacity and Reliability

\$ Millions

Replacement & Maintenance Capital



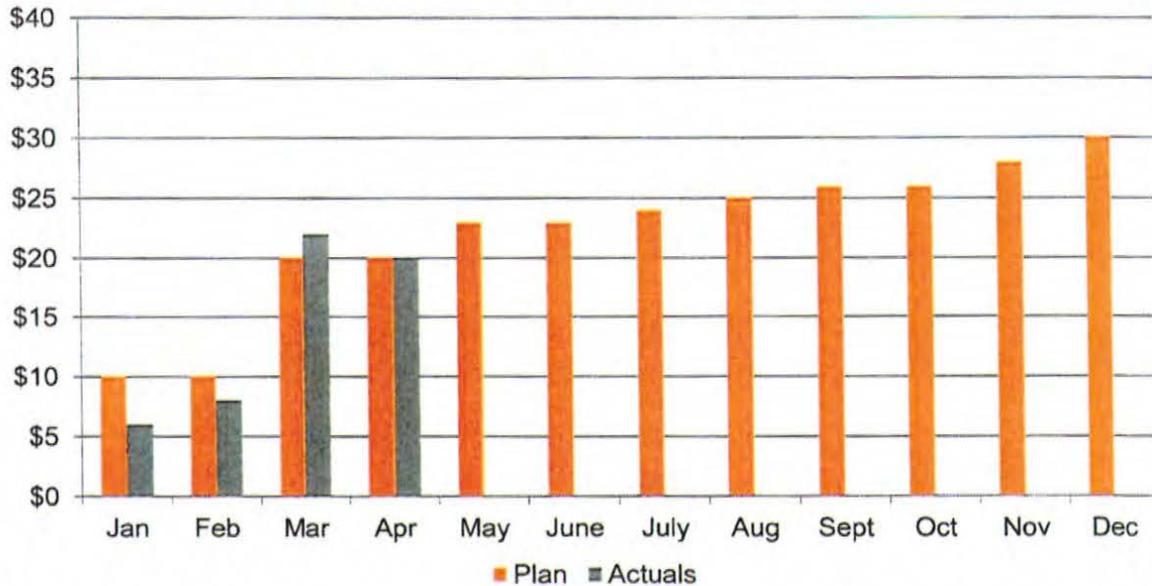
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Cumulative Plan	\$1	\$2	\$3	\$10	\$20	\$40	\$65	\$85	\$95	\$110	\$124	\$125
Actual	\$3	\$7	\$10	\$17								



North Dakota Capacity and Reliability

\$ Millions

Expansion & Efficiency Capital



Cumulative	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
Plan	\$10	\$20	\$40	\$60	\$83	\$106	\$130	\$155	\$181	\$207	\$235	\$265
Actual	\$6	\$14	\$36	\$56								





**CANADIAN
PACIFIC**

Robert A. Johnson
Vice President Operations
Southern Region

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Minneapolis, MN
55402

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Robert_A.Johnson@cpr.ca

May 30, 2014

Brian P. Kalk, Chairman
Randy Christmann, Commissioner
Julie Fedorchak, Commissioner
Public Service Commission of North Dakota
600 E. Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480

Dear Chairman Kalk, Commissioner Christmann, and Commissioner Fedorchak:

I am writing in response to your letter dated May 16, 2014, in which the Public Service Commission of North Dakota makes a request of Canadian Pacific for extensive rail transportation and service data dating back to January 1, 2009. Specifically, the letter requests rail transportation and service data for agricultural and crude oil movements that originate in North Dakota, regardless of destination, from January 1, 2009 to present. The letter states that the Public Service Commission intends to review the data "to determine whether to open a formal investigation." As authority for this extensive data request and potential formal investigation, the Commission asserts blanket jurisdiction "to regulate railroads "to ensure that all rates, facilities, and services are just and reasonable."

As you know, the Interstate Commerce Commission Termination Act grants "exclusive" jurisdiction to the United States Service Transportation Board over "rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities" of transportation by rail carriers in interstate and/or international commerce. 49 U.S.C. § 10501(a)(2) and (b)(1). In addition, "the remedies provided [by the Surface Transportation Board under federal law] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." *Id.* The rail transportation and service data that the Public Service Commission is requesting of Canadian Pacific concerns rail transportation in interstate and international commerce, and thus falls within the exclusive jurisdiction of the United States Service Transportation Board. Efforts to regulate and investigate such interstate and international commerce, beyond that of the Surface Transportation Board, are completely pre-empted.

Canadian Pacific appreciates the concern of North Dakota agricultural shippers to get the 2013 crop to market. The 2013 crop was a near record, as was the 2013 winter which lingered into April. Winter comes every year, and is prepared for every year, but this year was extreme. So much so that rail movements on all Class I railroads became severely congested at Chicago, the gateway over which the market directs most Midwestern grain on our railroad, thereby backing up the system. For Canadian Pacific this meant holding trains out of Chicago all the way back to Minnesota, with resultant congestion in North Dakota. We were also forced to route movements away from Chicago to the extent practicable.

Notwithstanding these challenges, with the ongoing system recovery in Chicago and throughout the supply chain we are confident we will get back to and exceed past volume levels for North Dakota shippers. To support this goal we are deploying additional assets and expect to move 40 to 50 percent more US grain in June, year over year. Canadian Pacific's performance metrics reflect improved service

across our U.S. rail network, and are available via our website. (See link: <http://www.cpr.ca/en/customer-centre/Pages/default.aspx>).

I note that implicit in the Public Service Commission data requests is a concern regarding crude oil shipments. Crude oil shipments are not impacting Canadian Pacific's ability to move grain in North Dakota to a significant degree. Crude oil and grain move in different lanes, and in different cars.

Canadian Pacific is dedicated to the long term growth of North Dakota. We have and continue to make a considerable direct investment in the state of North Dakota to increase capacity, improve service and maintain safe operations. Canadian Pacific invested approximately \$200 million in fixed infrastructure in the North Dakota between 2011 and 2013, and we are planning to make an additional \$70 million investment in 2014 with particular focus on capacity expansion and signal system upgrades.

We are committed to working with our North Dakota shippers, and with the Surface Transportation Board, to move North Dakota agricultural products to domestic and export markets, safely and quickly. We are in contact with our North Dakota shippers and strive to make sure that no shipper's needs are overlooked, and that urgent situations are addressed on a timely basis. If you think it would be helpful, I would be happy to discuss this matter with you further at a convenient time.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Johnson". The signature is fluid and cursive, with the first name being more prominent.

Robert Johnson
Vice President Operations,
Southern Region



Public Service Commission State of North Dakota

COMMISSIONERS

Brian P. Kalk
Randy Christmann
Julie Fedorchak

Executive Secretary
Darrell Nitschke

600 East Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480
Web: www.psc.nd.gov
E-mail: ndpsc@nd.gov
Phone: 701-328-2400
ND Toll Free: 1-877-245-6685
Fax: 701-328-2410
TDD: 800-366-6888 or 711

June 25, 2014

Brian Sweeney
Regional Administrative Vice President
BNSF Railway Company
325 Cedar St. Ste. 620
St. Paul, MN 55101

Herb Jones
Director State and Local Government Affairs
Canadian Pacific Railroad
Battle Creek Building
1010 Shop Road
St. Paul, MN 55106

Re: Railroad Service Backlog / Safety Upgrades in ND

Dear Mr. Sweeney and Mr. Jones:

As you know, the Public Service Commission and other North Dakota stakeholders have substantial concerns with rail service in North Dakota. We appreciate your responses to our May 16, 2014 communication, but we find that these responses were incomplete.

In line with our concerns regarding the backlog of railroad grain traffic, the Public Service Commission is continuing to communicate with North Dakota grain growers and elevators. In order to help us properly understand the situation, we will be holding another meeting on this issue on **Thursday, August 7, 2014 at 1:00 PM CDT**. We ask that your companies be represented at this session to answer concerns and questions of the Commission and the North Dakota grain producers.

North Dakota Century Code section 49-10.1-01 gives the Commission the authority to represent state interests in direct negotiations with rail carriers and in proceedings before Congress, federal agencies and courts. The Commission also has authority to open a formal investigation into matters within its jurisdiction.

The backlog is a large concern of our citizens, state industry, and of the Commission and other public officials. This meeting will be an opportunity for the Commission to gather information and decide how it may wish to move forward, either through a formal investigation, or some other action.

14 I-14-0151 Filed: 6/25/2014 Pages: 2
Letter to BNSF and Canadian Pacific requesting
additional information

Public Service Commission

Commissioner Christmann, Kalk, Fedorchak

Brian Sweeney & Herb Jones
June 25, 2014
Page 2

Please contact Darrell Nitschke, Executive Secretary with any questions, at dnitschk@nd.gov, or (701) 328-4098.

Thank you for your time, and we look forward to hearing from you in August.

Sincerely,



Randy Christmann
Commissioner



Brian P. Kalk
Chairman



Julie Fedorchak
Commissioner



Brian J. Sweeney
Regional AVP
State Government Affairs

BNSF Railway Company
Suite 620
325 Cedar St.
St. Paul, MN 55101
(651) 296-2458
brian.sweeney@bnsf.com

August 27, 2014

North Dakota Public Service Commission
State Capitol
600 East Boulevard Ave., Dept. 408
Bismarck, ND 58505

Commissioner Brian Kalk
Commissioner Ron Christmann
Commissioner Julie Fedorchak

RE: Requested information concerning back orders of rail cars

Dear Commissioners:

John Olson relayed to me your request for information concerning back orders of cars for coal, ethanol and oil. As I noted in my letter of May 28, 2014, the U.S. Surface Transportation Board has exclusive jurisdiction over the subjects of rail service and compliance with STB regulations. The STB has a proceeding underway regarding the issue of rail service and BNSF is complying with all STB information requests related to that proceeding. That information can be found in the filings section of the STB's website. In addition, as part of its continuing activity in that proceeding, the Board has scheduled a hearing Fargo, North Dakota, for September 4, and BNSF will be participating. We also refer the Commissioners to BNSF's Service Overview webpage (<http://www.bnsf.com/customers/service-page/index.html>). The materials that we regularly provide to the Board are available there, in addition to the many daily communications and the service overviews and updates that we provide to our customers in real time.

BNSF does not favor one commodity to the detriment of another. Oil train traffic has suffered along with all other freight categories. Cycle times for grain, oil and coal trains are all up, compared with last year. There are many news articles noting that service problems have been experienced by all categories of rail traffic. The STB's website contains letters from shippers of commodities other than grain concerning service issues. BNSF is a network with thousands of customers and our efforts are focused on restoring our network's overall velocity and expanding our network's capacity, steps which will benefit all of our customers. BNSF remains fully



Brian J. Sweeney
Regional AVP
State Government Affairs

BNSF Railway Company
Suite 620
325 Cedar St.
St. Paul, MN 55101
(651) 298-2458
brian.sweeney@bnsf.com

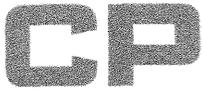
committed to restoring our network's service velocity as rapidly as possible. Other than safety, our railroad has no higher priority. BNSF is in the best position to consider the operational and investment steps necessary to increase network velocity for all customers. We have detailed those plans in our ongoing submissions to the Board and our communications with our customers, and we have made significant progress in implementing those steps.

BNSF continues to clear the backlog of grain car orders. As of August 22, the number of North Dakota grain cars past-due was 1,336. This is a significant reduction from the 8,000-plus North Dakota past dues in late March. (That number will likely begin to rise with the next harvest and changing market demands.) We remain in regular contact with our customers regarding this issue, both through personal contacts and weekly podcasts. Those are available to the PSC, as are the service updates on our service overview website referenced above.

Sincerely,

A handwritten signature in cursive script that reads "Brian J. Sweeney". The signature is written in black ink and is positioned above the printed name.

Brian J. Sweeney



August 28, 2014

Brian P. Kalk, Chairman
Randy Christmann, Commissioner
Julie Fedorchak, Commissioner
Public Service Commission of North Dakota
600 E. Boulevard, Dept. 408
Bismarck, North Dakota 58505-0480

Dear Chairman Kalk, Commissioner Christmann, and Commissioner Fedorchak:

This letter is in response to the verbal request for information concerning the movement of coal, oil and ethanol that you made to Canadian Pacific (CP) and BNSF at the August 7, 2014 meeting held in Bismarck regarding Railroad Services Backlog / Safety Upgrades in North Dakota. We have not received a written request for this information, but understand that the Commission is seeking information similar to that provided to the Surface Transportation Board regarding grain handling.

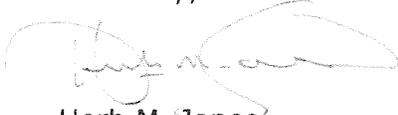
As you know and as stated in previous communications, the Interstate Commerce Commission Termination Act grants "exclusive" jurisdiction to the United States Surface Transportation Board (STB) over "rates, classifications, rules (including car service, interchange, and other operating rules), practices, routes, services, and facilities' of transportation by rail carriers in interstate and/or international commerce. 49 U.S.C. § 10501(a)(2) and (b)(1). In addition, "the remedies provided [by the Surface Transportation Board under federal law] with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law." *id.* As with your previous request, the rail transportation and service data that the Public Service Commission seeks now concerns rail transportation in interstate and international commerce, and thus falls within the exclusive jurisdiction of the United States Surface Transportation Board. Efforts to regulate and investigate such interstate and international commerce, beyond that of the Surface Transportation Board, are completely preempted.

CP is filing weekly status reports with the Surface Transportation Board under Docket No. EP 724 (Sub-No 2). Those filings can be found at the STB's website: www.stb.dot.gov/. For additional data regarding CP operations please refer to our public website found at: www.cpr.ca/. Under the "Investors" tab on the home page select "Key Metrics" to access these data. There we include carload data by commodity, by week. We also post weekly carload and revenue ton mile data by line of business.

Canadian Pacific shares your concern for our shippers and continues to identify and implement opportunities to improve service to them. We also continue to invest heavily in our North Dakota properties and expect capital spending to reach \$270 million in the State between 2011 and 2014. We are in contact with

our shippers and are working every day to ensure that no shipper is overlooked and that urgent situations are addressed as expeditiously and safely as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Herb M. Jones", with a large, sweeping flourish extending to the right.

Herb M. Jones
Director, State and Local Government Affairs